

## **EXHIBIT 1**

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 T. LEVY ASSOCIATES, INC. : CIVIL DOCKET FOR CASE  
: NO. 16-4929  
5 -VS- :  
:   
6 MICHAEL KAPLAN, ET AL :  
:

7  
8 - - -

9 PHILADELPHIA, PA.

10 JUNE 29, 2017

11 BEFORE HONORABLE MARK A. KEARNEY

12 JURY TRIAL - DAY 4

13 APPEARANCES:

14 FOR THE PLAINTIFF: SPECTOR GADON ROSEN PC  
BY: DANIEL J. DUGAN, ESQUIRE  
15 AND BRUCE BELLINGHAM, ESQUIRE  
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17 FOR THE DEFENDANT: OFFIT KURMAN, P.A.  
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25

1 OF EACH ONE. THERE ARE MANY, MANY, MANY, MANY CASES  
2 THAT ARE WON WITHOUT A WITNESS OR, FOR EXAMPLE, WITH ONE  
3 WITNESS AGAINST TEN. IT'S WHO YOU BELIEVE, NOT HOW MANY  
4 ARE CALLED OR BY WHOM.

5 YOU ARE ALSO TO CONSIDER WHETHER ANY --  
6 YOU ARE ALSO TO CONSIDER WHETHER ONE PARTY OR THE OTHER  
7 RELIED UPON AN EXHIBIT OR IF YOU SAW ANY DESIGNATION ON  
8 EXHIBITS THE PARTY OFFERED. IN OTHER WORDS, JUST  
9 BECAUSE SOMEBODY PUT UP THE EXHIBIT DOES NOT MEAN IT  
10 SUPPORTS THEM OR IT DOESN'T. YOU HAVE TO DECIDE WHAT  
11 THAT EXHIBIT MEANS. NOT SIMPLY, OH, PLAINTIFF  
12 INTRODUCED THAT OR DEFENDANT INTRODUCED THAT, THEREFORE,  
13 IT MUST BE IN FAVOR OF THEM. I DON'T KNOW THAT. THAT'S  
14 UP TO YOU.

15 YOU HEARD THE EXPERT TESTIMONY OF  
16 MR. ANDERSON AND MR. BRULENSKI IN THIS CASE. EXPERT  
17 TESTIMONY IS JUST LIKE WITNESS TESTIMONY. YOU HAVE TO  
18 CONSIDER THEIR QUALIFICATIONS, THEIR REASONS FOR THEIR  
19 CONCLUSIONS, THE RELIABILITY AND INFORMATION, AS WELL AS  
20 ALL OF THE FACTORS I TALKED ABOUT FOR ANY OTHER WITNESS.  
21 YOU GIVE WHATEVER WEIGHT OR CREDIT YOU THINK IS  
22 APPROPRIATE, JUST LIKE ALL OF THE EVIDENCE IN THE CASE.

23 IN DECIDING WHETHER TO ACCEPT OR RELY  
24 UPON THESE ACCOUNTANTS' TESTIMONY, YOU CAN CONSIDER ANY  
25 BIAS THEY MAY HAVE, INCLUDING WHETHER THEY ARE GETTING

1 PAID TO BE HERE, WHETHER THEY HAVE BEEN PAID IN THE  
2 FUTURE FOR ASSISTING COUNSEL OR THE PARTIES, AND WHETHER  
3 THEY MAKE A LARGE PORTION OF THEIR INCOME FROM  
4 TESTIFYING IN COURT.

5 A DEPOSITION, I JUST TOLD YOU, IS A SWORN  
6 STATEMENT GIVEN OUTSIDE MY PRESENCE AND YOURS. IT'S FOR  
7 THE EASE OF WITNESSES THAT CAN'T BE HERE, SO WE TAKE A  
8 DEPOSITION. IT'S UNDER OATH. DEPOSITION TESTIMONY, YOU  
9 CAN TELL THE SAME CONSIDERATION AS ANY OTHER TESTIMONY.  
10 WE PREFER LIVE TESTIMONY, BUT SOMETIMES YOU CAN'T BE  
11 HERE.

12 NOW, I'M GOING TO TELL YOU -- THAT TELLS  
13 YOU WHAT THE RULES ARE. NOW I AM GOING TO TELL YOU  
14 ABOUT THE CASE AND WHAT THE RULES ARE HERE. I WILL  
15 DETERMINE -- I WILL DESCRIBE THE TERM "PREPONDERANCE OF  
16 THE EVIDENCE," WHICH IS THE STANDARD BY WHICH T. LEVY  
17 ASSOCIATES MUST PROVE ITS CLAIMS, AND THEN I WILL  
18 DESCRIBE T. LEVY ASSOCIATES' CLAIMS AND THE DAMAGES IT  
19 CLAIMS ITS ENTITLED TO, TO THE EXTENT YOU FIND IT'S  
20 PROVED HIS CLAIMS.

21 SO MADAM DEPUTY NOW HAS THE VERDICT SLIP.  
22 I AM GOING TO ASK HER TO HAND EACH OF YOU THE VERDICT  
23 SLIP. THIS IS THAT OPEN-BOOK TEST I WAS TALKING ABOUT.  
24 DON'T GET DISCOURAGED BY THE FACT THERE'S A LOT OF  
25 QUESTIONS. IT'S JUST A LOT OF QUESTIONS BECAUSE THERE'S

1 THREE DEFENDANTS AND LOTS OF CHARGES, LOTS OF CLAIMS.

2 THANK YOU.

3 YOU ARE WELCOME TO TAKE NOTES, IF YOU  
4 WISH, ON THAT FORM. BY WAY OF PREVIEW, AT THE END OF  
5 THE DELIBERATIONS, I WILL ONLY HAVE ONE FORM. THE OTHER  
6 SEVEN WILL BE DESTROYED OR WE'LL GIVE YOU A NEW ONE IF  
7 YOU ALREADY WROTE ON IT. THE FOREPERSON WILL COME BACK  
8 WITH THE FINAL FORM AND TELL US THE VERDICT IN OPEN  
9 COURT.

10 OKAY. THE FIRST ISSUE IS PREPONDERANCE  
11 OF THE EVIDENCE. WHAT DOES THAT MEAN? THAT'S NOT A  
12 WORD WE THROW AROUND EVERY DAY. WHAT IT MEANS IS THAT  
13 T. LEVY ASSOCIATES HAS TO PROVE TO YOU IN LIGHT OF ALL  
14 THE EVIDENCE THAT WHAT IT CLAIMS IS MORE LIKELY SO THAN  
15 NOT SO. TO SAY IT DIFFERENTLY, IF YOU WERE TO PUT ALL  
16 OF THE EVIDENCE FAVORABLE TO T. LEVY ON ONE SIDE AND ALL  
17 THE EVIDENCE FAVORABLE TO EACH DEFENDANT SEPARATELY --  
18 DO YOU SEE HOW THAT SHEET SAYS: AS TO MICHAEL KAPLAN,  
19 AS TO NINA KAPLAN, AS TO BLC? THAT'S BECAUSE YOU HAVE  
20 TO DO THEM SEPARATELY. IT'S NOT FAIR TO ANY ONE TO BE  
21 STANDING HERE FOR THE OTHER. OKAY.

22 SO FOR EACH ONE YOU HAVE TO WEIGH IT.  
23 T. LEVY VERSE MICHAEL. T. LEVY VERSE NINA. T. LEVY  
24 VERSE BLC. NOW, T. LEVY'S JOB IS TO HAVE TO WIN, TO  
25 SUCCEED, TO CONVINCE YOU, IT MUST HAVE THE SCALES SLIP

1       EVER SO SLIGHTLY -- TIP EVER SO SLIGHTLY TO ITS SIDE.  
2       IF YOU FIND THAT THE SCALES ARE EQUAL, T. LEVY HAS NOT  
3       PERSUADED YOU. HOWEVER, IF THEY TIP EVER SO SLIGHTLY,  
4       WELL, WE SAY 51/49, RIGHT, EVER SO SLIGHTLY, THEN  
5       T. LEVY HAS MET ITS BURDEN OF PROOF BY A PREPONDERANCE  
6       OF THE EVIDENCE. THIS IS NOT BEYOND A REASONABLE DOUBT.  
7       THIS IS NOT CLEAR AND CONVINCING. NEITHER OF WHICH ARE  
8       IN THIS CASE RIGHT NOW. NEITHER ONE MATTER.  
9       PREPONDERANCE OF THE EVIDENCE.

10               CONVERSELY, TO THE EXTENT THE DEFENSE HAS  
11       SAID SOMETHING TO YOU WHICH THEY CLAIM IS A REASON WHY  
12       THEY SHOULD WIN, NOT JUST ACCUSING THEM, NOT JUST SAYING  
13       THE PLAINTIFF HAS NOT PROVEN ITS CASE, BUT ALSO CLAIMING  
14       ITS CLAIM OR ANY DEFENSE, IF THEY DON'T PROVE IT TO YOU  
15       BY A PREPONDERANCE, THEN THEY HAVE NOT MET THEIR  
16       STANDARD OF PROOF. YOU ARE TO CONSIDER THE TESTIMONY OF  
17       ALL WITNESSES IN DOING THAT, ALL DOCUMENTS, AND CONSIDER  
18       THEM AS TO EACH PERSON. T. LEVY VERSUS EACH PERSON  
19       INDEPENDENTLY. THAT'S WHY YOU HAVE THREE CATEGORIES IN  
20       YOUR VERDICT SLIP.

21               NOW, THE FIRST CLAIM YOU SEE ON YOUR  
22       SHEET, GOING BACK TO OUR OPEN-BOOK EXAM KIND OF IDEA,  
23       THE FIRST CLAIM IS CALLED RACKETEER INFLUENCE AND  
24       CORRUPT ORGANIZATIONS ACT. THE WORD FOR THAT IS RICO.  
25       IT'S R-I-C-O. NOW, I AM GOING TO USE THE WORD "RICO"



1 FOR SHORT, BUT THAT'S WHAT THE ACT IS. IT'S A  
2 CONGRESSIONAL ACT. IT'S A STATUTE.

3 FOR T. LEVY ASSOCIATES TO RECOVER AGAINST  
4 EACH -- AGAINST THE DEFENDANTS UNDER RICO, YOU MUST FIND  
5 THAT T. LEVY ASSOCIATES PROVED THE FOLLOWING FIVE  
6 ELEMENTS, FIVE THINGS, BY A PREPONDERANCE. FIRST -- AND  
7 I AM GOING TO EXPLAIN EACH OF THESE TO YOU, BECAUSE I'M  
8 GOING TO RUN THROUGH THEM AND I'M GOING TO EXPLAIN WHAT  
9 EACH MEANS.

10 FIRST, THE EXISTENCE OF AN ENTERPRISE.  
11 SECOND, THE ENTERPRISE ENGAGED IN OR HAD SOME EFFECT ON  
12 INTERSTATE OR FOREIGN COMMERCE. THIRD, THE DEFENDANTS  
13 WERE EMPLOYED BY OR ASSOCIATED WITH THIS ALLEGED  
14 ENTERPRISE, FOURTH, THE DEFENDANTS CONDUCTED THE  
15 ENTERPRISE'S AFFAIRS OR PARTICIPATED EITHER DIRECTLY OR  
16 INDIRECTLY IN THE CONDUCT OF THE ENTERPRISE'S AFFAIRS.  
17 AND FIFTH, THE DEFENDANTS PARTICIPATED THROUGH A PATTERN  
18 OF RACKETEERING ACTIVITY.

19 NOW, I KNOW THAT EVERY ONE OF YOUR MINDS  
20 IS, WELL, WE BETTER GET THAT INSTRUCTION WHEN WE GO BACK  
21 THERE. BUT I AM STILL GOING TO GIVE IT TO YOU PIECE BY  
22 PIECE WHAT THEY MEAN. SOMETIMES YOU NEED TO HEAR IT.

23 NOW, FIRST, ENTERPRISE. DO YOU REMEMBER  
24 THE FIRST THING I SAID, ENTERPRISE? MUST PROVE THE  
25 EXISTENCE OF AN ENTERPRISE. AN ENTERPRISE CAN BE A

1       LEGAL ENTITY, SUCH AS A CORPORATION OR PARTNERSHIP, OR  
2       IT CAN BE A GROUP OF PERSONS THAT ARE ASSOCIATED IN  
3       FACT, ALTHOUGH THEY ARE NOT A LEGAL ENTITY.

4                       THIS CASE, AS YOU MAY HAVE HEARD,  
5       INVOLVES A SECOND CATEGORY OF INDIVIDUALS. THAT IS THE  
6       ALLEGATION IS AN ENTERPRISE OF INDIVIDUALS ASSOCIATED IN  
7       FACT. BUT WE CALL IT AN ASSOCIATION IN FACT ENTERPRISE.

8                       T. LEVY ASSOCIATES ALLEGES THE ENTERPRISE  
9       CONSISTS OF ALL THE DEFENDANTS, THAT EXISTS FOR THE  
10      PURPOSES OF MISAPPROPRIATING THE ACT OF T. LEVY  
11      ASSOCIATES FOR THEIR OWN USE, PRIMARILY IN THE OPERATION  
12      OF BLC.

13                      IN ORDER TO FIND THE EXISTENCE OF AN  
14      ASSOCIATION OF FACT ENTERPRISE, YOU HAVE TO FIND T. LEVY  
15      PROVED, FIRST, THAT THIS GROUP HAD A PURPOSE AND A  
16      LONGEVITY SUFFICIENT FOR THE MEMBERS OF THE GROUP TO  
17      PURSUE ITS PURPOSE, SECOND, THE GROUP HAD AN ONGOING  
18      ORGANIZATION, WHETHER FORMAL OR INFORMAL, WITH SOME SORT  
19      OF FRAMEWORK FOR CARRYING OUT ITS OBJECTIVES, AND,  
20      THIRD, THERE WAS A RELATIONSHIP AMONG THE MEMBERS OF THE  
21      GROUP, AND THE MEMBERS OF THE GROUP FUNCTIONED AS A  
22      CONTINUING UNIT TO ACHIEVE A COMMON PURPOSE.

23                      THE EVIDENCE THAT SHOWS A PATTERN OF  
24      RACKETEERING ACTIVITY MAY BE CONSIDERED IN DETERMINING  
25      WHETHER T. LEVY ASSOCIATES PROVED AN ASSOCIATION OF FACT



1 ENTERPRISE, AND PROOF OF A PATTERN OF RACKETEERING  
2 ACTIVITY MAY BE SUFFICIENT FOR YOU TO INFER THE  
3 EXISTENCE OF AN ASSOCIATION OF FACT ENTERPRISE. T. LEVY  
4 ASSOCIATES NEED NOT PROVE THE GROUP HAD A HIERARCHAL  
5 STRUCTURE OR CHAIN OF COMMAND. DECISIONS MAY HAVE BEEN  
6 MADE ON THAT BASIS BY ANY NUMBER OF METHODS.

7 T. LEVY ASSOCIATES ALSO NEED NOT PROVE  
8 THAT MEMBERS OF THE GROUP HAD FIXED ROLES. DIFFERENT  
9 MEMBERS CAN DO DIFFERENT ROLES AT DIFFERENT TIMES.  
10 T. LEVY ASSOCIATES NEED NOT PROVE THE GROUP WAS A  
11 BUSINESSLIKE ENTITY OR HAD A NAME OR REGULAR MEETINGS OR  
12 RULES AND REGULATIONS, THINGS LIKE THAT. AN ENTERPRISE  
13 IS ALSO NOT LIMITED TO A GROUP WHOSE CRIMES ARE  
14 SOPHISTICATED, DIVERSE, COMPLEX, OR UNIQUE.

15 THE SECOND ISSUE THAT WE TALKED ABOUT AND  
16 I TALKED ABOUT THOSE FIVE THINGS IS THEY MUST BE ENGAGED  
17 IN OR ACTIVITIES WHICH AFFECT INTERSTATE OR FOREIGN  
18 COMMERCE. T. LEVY HERE MUST SHOW THE THE ENTERPRISE  
19 ENGAGED IN OR HAD AN AN EFFECT ON INTERSTATE OR FOREIGN  
20 COMMERCE. TO DO THAT, TO ENGAGE IN OR HAVE AN EFFECT ON  
21 INTERSTATE FOREIGN COMMERCE MEANS THE ENTERPRISE EITHER  
22 ENGAGED IN OR HAD AN EFFECT ON COMMERCE BETWEEN TWO OR  
23 MORE STATES OR COMMERCE BETWEEN A STATE AND FOREIGN  
24 COUNTRY.

25 AN ENTERPRISE ENGAGED IN INTERSTATE OR

1 FOREIGN COMMERCE WHEN IT IS ITSELF DIRECTLY ENGAGED IN  
2 THE PRODUCTION, DISTRIBUTION, OR ACQUISITION OF  
3 SERVICES, MONEY, GOODS OR OTHER PROPERTY IN INTERSTATE  
4 OR FOREIGN COMMERCE. ALTERNATIVELY, AN ENTERPRISE'S  
5 ACTIVITY'S AFFECT INTERSTATE OR FOREIGN COMMERCE IF ITS  
6 ACTIVITIES IN ANY WAY INTERFERED WITH, CHANGED, OR  
7 ALTERED THE MOVEMENT OR TRANSPORTATION OR FLOW OF GOODS,  
8 MERCHANDISE, OR OTHER PROPERTY BETWEEN OR AMONG TWO OR  
9 MORE STATES AND BETWEEN A STATE AND FOREIGN COUNTRY.  
10 T. LEVY ASSOCIATES MUST PROVE THAT THE ENTERPRISE  
11 ACTIVITY HAD SOME EFFECT ON COMMERCE, NO MATTER HOW  
12 MINIMAL OR SLIGHT.

13 THEY DON'T HAVE TO -- IT DOES NOT HAVE TO  
14 PROVE TO YOU THAT THE PATTERN OR INDIVIDUAL ACTS OF  
15 RACKETEERING ACTIVITY THEMSELVES AFFECTED INTERSTATE OR  
16 FOREIGN COMMERCE. RATHER IT IS THE ENTERPRISE AND  
17 ACTIVITY CONSIDERED AS A WHOLE THAT MUST BE SHOWN TO  
18 HAVE THAT EFFECT. ON THE OTHER HAND, THIS EFFECT ON  
19 INTERSTATE OR FOREIGN COMMERCE MAY BE ESTABLISHED  
20 THROUGH THE EFFECT OF CAUSED BY THE PATTERN OR  
21 INDIVIDUAL ACT OF RACKETEERING ACTIVITY.

22 THIRD, FORESEEABLE RICO, T. LEVY  
23 ASSOCIATES MUST PROVE THAT THE DEFENDANTS WERE EMPLOYED  
24 BY OR ASSOCIATED WITH THE ALLEGED ENTERPRISE. TO PROVE  
25 THE DEFENDANTS WERE EITHER EMPLOYED BY OR ASSOCIATED

1 WITH ENTERPRISE, T. LEVY ASSOCIATES MUST PROVE BY A  
2 PREPONDERANCE OF THE EVIDENCE DEFENDANTS WERE CONNECTED  
3 TO THE ENTERPRISE IN SOME MEANINGFUL WAY, AND THEY KNEW  
4 OF THE EXISTENCE OF THE ENTERPRISE AND THE GENERAL  
5 NATURE OF ITS ACTIVITIES.

6 THE FOURTH ISSUE ON CIVIL RICO, T. LEVY  
7 ASSOCIATES MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE  
8 DEFENDANTS PARTICIPATED DIRECTLY OR INDIRECTLY IN THE  
9 CONDUCT OF THE AFFAIRS OF THE ENTERPRISE. TO DO THIS,  
10 THEY MOST SHOW THERE IS A CONNECTION BETWEEN THE  
11 DEFENDANTS AND THE CONDUCT OF THE AFFAIRS OF THE  
12 ENTERPRISE AND THE DEFENDANTS TOOK SOME PART IN THE  
13 OPERATION OR MANAGEMENT OF THE ENTERPRISE OR HAD SOME  
14 ROLE IN DIRECTING THE ENTERPRISE'S AFFAIRS.

15 THE FIFTH ELEMENT FOR RICO, THE LAST ONE,  
16 IS T. LEVY ASSOCIATES MUST PROVE THE DEFENDANTS  
17 PARTICIPATED IN A CONDUCT OF THE ENTERPRISE AFFAIRS  
18 THROUGH A PATTERN OF RACKETEERING ACTIVITY. TO DO THAT,  
19 THEY MUST PROVE THE FOLLOWING BY A PREPONDERANCE:

20 FIRST, DEFENDANTS COMMITTED AT LEAST TWO  
21 OF THE ALLEGED ACTS OF RACKETEERING ACTIVITY AND THE  
22 LAST ACT OF RACKETEERING ACTIVITY OCCURRED WITHIN TEN  
23 YEARS AFTER THE COMMISSION OF THE PREVIOUS ACT OF  
24 RACKETEERING ACTIVITY.

25 SECOND, THE ACTS OF RACKETEERING ACTIVITY

1 RELATED TO EACH OTHER, MEANING THERE IS A RELATIONSHIP  
2 BETWEEN OR AMONG THE ACTS OF RACKETEERING ACTIVITY.  
3 ACTS ARE RELATED TO ONE ANOTHER IF THEY HAVE THE SAME OR  
4 SIMILAR PURPOSES, RESULTS, PARTICIPANTS, VICTIMS, OR  
5 METHODS, OR THEY HAVE A COMMON DISCONTINUING  
6 CHARACTERISTIC AND ARE NOT ISOLATED EVENTS.

7 THIRD, THE ACT OF RACKETEERING ACTIVITY  
8 AMOUNTED TO OR POSED A THREAT OF CONTINUED UNLAWFUL  
9 ACTIVITY, MEANING THE ACTS EXTENDED OVER A SUBSTANTIAL  
10 PERIOD OF TIME OR THE ACTS BY THEIR NATURE ARE LIKELY TO  
11 BE REPEATED INTO THE FUTURE.

12 AND FOURTH, THE DEFENDANTS CONDUCTED OR  
13 PARTICIPATED, DIRECTLY OR INDIRECTLY, IN THE CONDUCT OF  
14 THE ENTERPRISE'S AFFAIRS THROUGH THE POWER OF  
15 RACKETEERING ACTIVITY.

16 SO, JUDGE, WHAT DOES RACKETEERING  
17 ACTIVITY MEAN? RACKETEERING ACTIVITY AS DEFEND BY THE  
18 CONGRESS IN THE RICO STATUTE INCLUDES ANY ACTS THAT  
19 INVOLVE OR CAN BE CHARGED AS ANY OF A WIDE RANGE OF  
20 CRIMES UNDER FEDERAL OR STATE LAW. AN ACT OF  
21 RACKETEERING ACTIVITY IS ALSO CALLED A PREDICATE ACT.  
22 THAT'S ANOTHER WORD THAT WE USE.

23 TO DETERMINE THERE'S A PATTERN OF  
24 RACKETEERING ACTIVITY, YOU MUST CONSIDER ONLY THOSE  
25 SPECIFIC RACKETEERING ACTS T. LEVY ASSOCIATES ALLEGED



1 AGAINST DEFENDANTS. IN OTHER WORDS, YOU CAN'T MAKE THEM  
2 UP, YOU CAN'T THINK OF SOME OTHER CRIMES. IT HAS TO BE  
3 WHAT THEY ARE SAYING THEY DID. YOU CAN'T FIND  
4 DEFENDANTS ENGAGED IN A PATTERN OF RACKETEERING ACTIVITY  
5 UNLESS YOU UNANIMOUSLY AGREE ON WHICH OF THE ALLEGED  
6 PREDICATE ACTS, IF ANY, MADE UP THE PATTERN.

7 FOR EXAMPLE, IF SOME OF YOU FIND THAT THE  
8 PREDICATE ACTS ARE A AND B AND OTHERS OF YOU FIND THE  
9 PREDICATE ACTS ARE C AND D, THEN YOU DON'T HAVE AN  
10 AGREEMENT, AND YOU CAN'T FIND A PATTERN OF PREDICATE  
11 ACTIVITY. EVEN IF YOU ALL AGREE THERE IS PREDICATE  
12 ACTIVITY, IT HAS TO BE THE SAME ONE.

13 THE RACKETEERING ACTIVITIES THAT ARE  
14 ALLEGED HERE BY T. LEVY ASSOCIATES ARE ACTS THAT VIOLATE  
15 THE FEDERAL, THAT'S THE UNITED STATES, MAIL AND WIRE  
16 FRAUD STATUTES. I HAVE TO EXPLAIN TO YOU THESE STATUTES  
17 SO YOU UNDERSTAND WHETHER T. LEVY PROVED TO YOU THAT THE  
18 DEFENDANTS VIOLATED THEM AS PREDICATE ACTS.

19 FIRST, THE MAIL FRAUD STATUTE AS A  
20 PREDICATE OFFENSE. TO PROVE MAIL FRAUD, T. LEVY  
21 ASSOCIATES MUST SHOW THE FOLLOWING: THAT THE DEFENDANTS  
22 WILLFULLY AND KNOWINGLY PARTICIPATED IN A SCHEM TO  
23 DEFRAUD T. LEVY ASSOCIATES. SECOND, THEY DID SO WITH AN  
24 INTENT TO DEFRAUD, AND, THIRD, THEY USED THE U.S. MAIL  
25 FOR THE PURPOSE OF EXECUTING THE SCHEME TO DEFRAUD.